UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1997/104
16 January 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Note by the Secretary-General

1. At its forty-eighth session, the Sub-Commission, in its resolution 1996/28 of 29 August 1996, decided to transmit the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven (E/CN.4/Sub.2/1996/17), to the Commission on Human Rights for its consideration together with the comments of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation (E/CN.4/Sub.2/1996/16, paras. 10-32), and the comments of the Sub-Commission during its forty-eighth session (see E/CN.4/Sub.2/1996/SR.25-29 and 35).

2. The Sub-Commission also requested Mr. van Boven to prepare, without financial implications, a note taking into account the comments and observations of the working group and the Sub-Commission referred to above, in order to facilitate the examination by the Commission on Human Rights of the draft revised basic principles and guidelines.

3. In pursuance of this resolution, the Secretary-General is transmitting to the Commission on Human Rights the revised draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven (E/CN.4/Sub.2/1996/17) and the report of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation (E/CN.4/Sub.2/1996/16).

4. The note prepared by Mr. van Boven is contained in the annex to the present document.

Annex

Note prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven, in accordance with paragraph 2 of Sub-Commission resolution 1996/28

[13 January 1997]

1. The former Special Rapporteur carefully examined the comments and observations made by members of the sessional working group of the Sub-Commission on the administration of justice and the question of compensation and by other participants in these proceedings, as reflected in the report of the working group (E/CN.4/Sub.2/1996/16, paras. 10-32), as well as a number of suggestions he received from individual members of the Sub-Commission. On that basis he has reviewed the draft revised basic principles and guidelines he previously submitted to the Sub-Commission (E/CN.4/Sub.2/1996/17).

2. As a result, with a view to facilitate the work of the Commission on Human Rights, the former Special Rapporteur now submits in the appendix hereto the draft revised basic principles and guidelines in a partly adapted version. Wherever wording is suggested as additions to or changes of the revised basic principles and guidelines, such wording is presented in italics. Where wording is put in square brackets, the former Special Rapporteur suggests that such wording be deleted. He hopes that this method will serve a helpful purpose and he is confident that the Commission on Human Rights will be able to deal fruitfully and expeditously with this important matter.

Appendix

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF [GROSS] VIOLATIONS OF HUMAN RIGHTS AND *INTERNATIONAL* HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and *international* humanitarian law

1. Under international law every State has the duty to respect and to ensure respect for human rights and *international* humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and *international* humanitarian law

2. The obligation to respect and to ensure respect for human rights and *international* humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights *and international humanitarian law* and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection *will be made* applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her *human* rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right to access to national and *any available* international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.

Every State shall provide for universal jurisdiction over gross violations of human rights and *international* humanitarian law which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims *of violations of human rights and international humanitarian law*, the immediate family, dependants or other persons or groups of persons *closely* connected with the direct victims.

7. [In accordance with international law,] States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, [both at home and where necessary abroad,] the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights *or international* humanitarian law. Civil claims relating to reparations for gross violations of human rights and *international* humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights *or international* humanitarian law shall be implemented in a diligent and prompt manner.

Forms of reparation

Reparations, *to be provided in accordance with the law of every State*, may take any one or more of the forms mentioned below, which are not exhaustive, viz:

12. Restitution shall be provided to re-establish the situation that existed prior to the violations of human rights *or international* humanitarian law. Restitution requires, inter alia, restoration of liberty, family life, citizenship, return to one's place of residence, *and restoration of* employment *or* property.

13. Compensation shall be provided for any economically assessable damage resulting from violations of human rights *or international* humanitarian law, such as:

(a) Physical or mental harm, including pain, suffering and emotional distress;

(b) Lost opportunities including education;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Harm to reputation or dignity;

(e) Costs required for legal or expert assistance, *medicines and medical services*.

14. Rehabilitation shall be provided and will include medical and psychological care as well as legal and social services.

15. Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:

(a) Cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth;

(c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons closely connected with the victim;

(d) Apology, including public acknowledgement of the facts and acceptance of responsibilty;

(e) Judicial or administrative sanctions against persons responsible for the violations;

(f) Commemorations and paying tribute to the victims;

(g) Inclusion in human rights training and in history *or school* textbooks of an accurate account of the violations committed in the field of human rights and *international* humanitarian law;

(h) Preventing the recurrence of violations by such means as:

(i) Ensuring effective civilian control of military and security forces;

(ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;

(iii) Strengthening the independence of the judiciary;

(iv) Protecting *persons in* the legal profession and human rights defenders;

(v) *Conducting and strengthening*, on a priority *and continued* basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.

- - - - -